

First Supplement to Memorandum 94-51

**Exemptions from Enforcement of Money Judgments:
Comments of State Bar Legal Services Section**

Attached to this supplement is a letter from Robin Leonard on behalf of the Consumer Advocacy Committee of the State Bar Legal Services Section commenting on the tentative recommendation on *Exemptions from Enforcement of Money Judgments*.

The Committee proposes some alternate language for Code of Civil Procedure Section 704.780. (See page 21 in the tentative recommendation.) The language in the tentative recommendation was worked out at the last Commission meeting because of concerns for clarity and we are reluctant to change it unless the Commission determines that the suggested language is clearer. The staff is concerned that the structure of the proposed language is not consistent with the drafting of other exemption provisions, it omits the "aggregate equity" concept that is present in other monetary exemptions, and it introduces the phrase "the debtor may exempt..." which does not appear in other similarly-structured exemptions. Perhaps the Bar Section's concern would be alleviated if the were revised as follows:

704.220. In addition to or in combination with any other property exempt under this article, the aggregate equity in one or more items of real or personal property is exempt in the aggregate amount of five thousand dollars (\$5,000).

The Committee approves of the revision concerning homesteads in Section 704.780. (See pp. 21-22 in the tentative recommendation.)

The Committee also urges that the alternative state bankruptcy exemption amounts be doubled in line with the new federal statute. This issue is discussed in Memorandum 94-51.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



1st Supp. Memo 94-51

EXHIBIT

Study D-351

THE STATE BAR OF CALIFORNIA

OFFICE OF RESEARCH

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November 16, 1994

VIA FAX

Law Revision Commission

RECEIVED

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Via D-351

Stan Ulrich
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Creditors Remedies Matters

Dear Mr. Ulrich,

Enclosed are the comments of the State Bar Legal Services Section on the Commission's report and tentative recommendations on debtor-creditor relations.

These are the comments only of the Legal Services Section and have not been reviewed or approved by the State Bar Board of Governors.

If you have any questions, please contact me.

Sincerely,

David C. Long
Director of Research

DCL:jhc
Enclosure

cc: Jay Plotkin
Kenneth Babcock
Robin Leonard
Diane Yu
Larry Doyle

c:\work\David\Ulrich.ltr

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David Long
Director of Research
State Bar of California
555 Franklin Street
San Francisco, CA 94102
November 3, 1994

Re: Debtor-Creditor Relations

The Consumer Advocacy Committee of the Legal Services Section wishes to submit the enclosed response to the Law Revision Commission regarding its Report and Tentative Recommendations on Debtor-Creditor Relations.

The Legal Services Section of the State Bar of California submits the enclosed response regarding the Commission's Report and Tentative Recommendations on Debtor-Creditor Relations.

Code of Civil Procedure § 704.220 (added) Wildcard exemption.

The Section supports the aim of proposed new section—to create a wildcard exemption of up to \$5,000 to be used by debtors toward any real or personal property. The Section is concerned that the wording of the proposed new section leaves open two possible unintended interpretations:

- That a debtor can use this exemption only to increase the exemption amount of an item already partially exempt, but not to exempt an item otherwise not exempt at all. Although this point is clarified in the comment, we believe the statutory language could be made more clear.
- That a debtor may not be able to exempt property after levy or subject to a lien, because the execution or other lien would reduce or eliminate the debtor's equity before the exemption was claimed.

The Section recommends the following substitute language:

704.220. In addition to or in combination with the property exempt under this article, the debtor may exempt an interest in any one or more items of property, real or personal, to the aggregate amount of \$5,000.

Code of Civil Procedure § 704.780 (amended) Hearing on homestead exemption.

The Section supports this proposed amendment.

As a final comment, the Section wishes to reiterate an earlier proposal we submitted—to double all exemptions in Code of Civil Procedure §703.140. These exemptions (available only in bankruptcy) were, until this past month, virtually identical to the federal bankruptcy exemptions. The Bankruptcy Reform Act of 1994, however, just doubled the federal bankruptcy exemptions. It makes sense to now double the California bankruptcy exemptions.

If you have any questions or comments regarding the above, please call Robin Leonard of the Section's Standing Committee on Consumer Advocacy at 510-704-2255.

Thank you for your consideration of these matters.

Robin Leonard, for

The State Bar of California
Legal Services Section
Standing Committee on Consumer Advocacy